

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

COMMON CAUSE GEORGIA, as an )  
organization, )  
                        ) )  
                        ) Plaintiff, )  
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                        ) )  
                        ) )  
                        ) )  
v.                         ) Case No. 18-cv-05102-AT  
                        ) )  
BRIAN KEMP, in his official capacity as )  
Secretary of State of Georgia )  
                        ) )  
                        ) )  
                        ) ) Defendant. )  
                        ) )

## **DECLARATION OF EDGARDO CORTÉS**

I, Edgardo Cortés, declare as follows under penalty of perjury:

1. I have worked in elections for more than 15 years, with experience in all facets of the electoral process. I am the former Commissioner of Elections for the Commonwealth of Virginia, the agency head of the Virginia Department of Elections and the Chief State Election Official, having served from 2014 to 2018. I am the former Chairman of the Board

for the Electronic Registration Information Center and the former Chairman of the U.S. Election Assistance Commission Standards Board. I was a charter member of the Election Infrastructure Government Coordinating Council established by the United States Department of Homeland Security. I also previously served as General Registrar in Fairfax County, Virginia. I currently serve as Election Security Advisor to the Brennan Center for Justice at NYU School of Law.

2. I provide this declaration in my capacity as a non-partisan advisor working for the Brennan Center. In the interest of full disclosure, I note that my wife works for the Democratic National Committee, including in matters related to the Georgia election. I do not have knowledge of her work in Georgia and have not discussed anything contained in this declaration with her.
3. For a number of reasons, I believe that the uncounted provisional ballots could prove pivotal in determining whether the contest for governor, among other contests, might be forced to go into a runoff. It is my understanding that under Georgia law, if a candidate does not receive more than 50 percent of the vote in a general election, the top two finishers advance to a runoff, which would take place on December 4.

4. Mr. Kemp's unofficial totals are close enough to the threshold for a run-off that counting these provisional votes could end up being the difference as to whether he is above or below the threshold. I base this conclusion on my experience with unofficial results and the current closeness of those totals.
5. According to the unofficial results listed on the Georgia Secretary of State's website, as of 12:26 p.m., candidate Brian Kemp had 1,973,935 votes, or 50.33% of votes. This means that he is just 13,042 votes above the 50% threshold for a runoff. My understanding based on reporting from multiple news sources is that there are currently approximately 21,190 uncounted provisional ballots. A true and correct copy of the unofficial results page listed on the Georgia Secretary of State's website, is attached hereto as Exhibit A.
6. There are a number of reasons why Mr. Kemp's final vote totals may be lower than his current unofficial total, and why Stacey Abrams totals may be higher.
7. Most importantly, it is my understanding the canvassing of vote totals is not yet completed statewide. The Official Code of Georgia states that such returns "shall be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which such election was held and such

returns shall be immediately transmitted to the Secretary of State." O.C.G.A. § 21-2-493(k).

8. In my experience as an election administrator at the local and state level, canvasses frequently turn up anomalies that result in the kinds of changes that could be big enough to result in the uncounted provisional ballots tipping this election into a required runoff.
9. There are three common errors in tabulating unofficial results that frequently result in the capturing or changing of hundreds and even thousands of votes. These kinds of errors are generally identified and resolved in the canvass prior to local certification of results.
10. First, after an extremely long day of work, poll workers fail to add up the totals from every machine in a polling place. The result is that the vote totals from entire machines are initially uncounted.
11. Second, in transcribing the unofficial results, numbers get jumbled, so that "148 votes" is read as "841 votes."
12. Finally, vote totals for a precinct or polling place can be reversed, so that candidate X is marked as receiving the totals for candidate Y, and vice-versa.

13.In most elections, such errors do not have any impact on the outcome of a contest. In races where the critical margin is less than 0.5%, these kinds of errors can flip results between the unofficial results on election night and the completion of the canvass.

14.Finally, I have noticed one other number in the unofficial tally that leads me to believe the final canvass could result in altered numbers during the canvass that could be critical in determining whether a runoff will be required. The total ballots cast in Georgia for this year's general election is 3,932,102, but the total votes for the governor's race is 3,921,787. That's a difference of 10,315. Based on my experience, that seems like a high undervote for the first race on the ballot and the highest profile race in the election. More than 10% of that gap is from Fulton County, where the difference between total votes cast and total votes for governor is 1,172. It is possible there is a reasonable explanation for this, such as accounting for write-in votes, but there was no additional information available on the Secretary of State's website. A true and correct copy of the unofficial results page for Fulton County listed on the Georgia Secretary of State's website, is attached hereto as Exhibit B.

15. If necessary, I would do my best to make myself available to the Court and the parties in the case to elaborate on the opinions stated herein.

My name is Edgardo Cortes, my date of birth is December 6, 1979; my office address is 8173 Curving Creek Court, Springfield, Virginia 22153; and I declare under penalty of perjury that the foregoing is true and correct.

Executed in Springfield, Virginia on the 9<sup>th</sup> day of November 2018.



EDGARDO CORTES